UNIFORMITY OF LAWS IN CANADA

ADDRESS DELIVERED BY EUGENE LAFLEUR, K. C. BEFORE THE CANADIAN CLUB, OTTAWA, DECEMBER 7, 1912.

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During the debates on confederation there were some distinguished statesmen who would have desired a complete legislative union. Chief among these, Sir John A. Macdonald always contended that if we could agree to have one government and one parliament, it would be the best, the cheapest, the most vigorous, and the strongest system of government that we could adopt. But the Fathers of Confederation found that such a system would have to be abandoned as it would not obtain the assent of Lower Canada or of the Maritime Provinces.

It is not my purpose to inquire whether a more centralised system would have given us greater happiness or prosperity, for the choice which was made in 1867 is probably definitive, and while modifications in the details of the B. N. A. Act may from time to time be asked for and obtained, its general principles are likely to remain unchanged.

But, notwithstanding this distribution of legislative powers, there are means within the constitution by which our differences may be either intensified or reduced. It does not follow that because the provinces are in a great measure autonomous, their power of legislation should be used in such a way as to put them further asunder than they were at the time of Confederation. It may, on the contrary, be the part of good statesmanship to utilize these great powers in the direction of unification and harmony. The questions to which I desire to address myself are

1. How far is uniformity desirable? and
2. Assuming that it is, how is it attainable?

If we ask the statesmen of any of the highly centralised European states whether uniformity of laws is beneficial, their answer will be that it has made for the improvement of commercial intercourse and for national unity. No one doubts that France is better off under the Napoleonic Code than when each of its provinces had laws and customs which clashed with those of the other provinces. And unified Italy would not dream of returning to the diversity and conflict of its component parts.

But, leaving aside the centralised nations, let us see what has been the evolution of federated states in Europe. The largest and most powerful of them all, Germany, has now a civil code which governs the whole Empire, although its enactment involved the unification of systems so diverse as the Prussian **Landrecht,** the French law of the Rhenish provinces, the Saxon law, and the **Gemeinrecht,** or Roman common law of Byzantine origin and written in latin and greek—not to speak of infinite subdivisions in some of these categories. We are told that in Silesia there were sixty different kinds of laws as to marriage contracts, and that in Bavaria the number was incalculable, 70 or 80 being more or less known and understood, while the rest were beyond the ken of the judges. And yet the prodigious task of unification was peaceably and successfully accomplished, notwithstanding racial and religious difficulties far greater than those which can ever confront us.

Let us now turn to the smallest of the confederations, little Switzerland. Its cantons included three different races, and it had and still has three official languages. It comprised, apart from the main branches of French and Teutonic origin, an infinite variety of local laws and customs, which have been happily and harmoniously welded into one complete code for the whole confederation.

Coming nearer home, what has been the tendency in the great republic to the south of us?

While the founders of the Union had to be contented with a far less centralised system than the authors of "The Federalist" would have desired, the undeniable tendency has been in the direction of uniformity, not merely by an expansive construction of the constitution which enlarged the scope of the central legislative power, but by the voluntary and combined action of the autonomous states.

Before examining the points of difference between our own provinces, it may be useful to consider the points of similarity.

We are far more unified under the B. N. A. Act than the United States are under their Constitution.

Among the important branches of the law under federal jurisdiction are:

Navigation and shipping;
Currency and coinage;
Banking and the issue of paper money;
Savings banks;

Weights and measures;
Bills of Exchange and promissory notes;
Interest and legal tender;
Bankruptcy and insolvency;
Patents of invention and discovery;
Copyrights;
Naturalization and aliens;
The criminal law;
Interprovincial railways, telegraphs, canals and lines of steamships.

This enumeration, which is by no means complete, is nevertheless sufficient to show how much more centralised we are than our neighbours to the south. And we have, in addition, a provision of which they have often felt in want, namely, the power given to the parliament and government of Canada of enforcing all our obligations towards foreign countries arising under treaties.

Having so much in common, what should be our tendencies and endeavours? Should we, as some think, stubbornly resist any further assimilation, and resolutely perpetuate our distinctive systems as they existed at the time of Confederation?

There are those who believe and profess that each province should cling desperately to its peculiar institutions and resist outside influences, for fear of losing its individuality; while others look forward to a future in which the constant interchange of thought and the ever increasing frequency of social and commercial relations will inevitably result in the harmonizing and simplification of our legal systems.

Remember I am not discussing the eternal controversy between federalists and autonomists. We are not now concerned with the battle which has raged in the United States since the days of Hamilton and Jefferson as to the preponderance of the central power or of States rights, or in Canada since confederation as to Dominion or provincial jurisdiction.

What I invite you to consider is whether, by the voluntary and concerted action of the provinces themselves, there are not many subjects on which it would be expedient to remove conflicts of law and nationalize our jurisprudence.

Let me give you a few concrete illustrations, which will help us to form a judgment as to the desirability of unification.

For obvious reasons I omit questions which are controversial at the present moment. For example the subject of Marriage

and Divorce, which is at present agitating the public mind. As you know, the jurisdiction is divided between the central and local legislative power, and a large and important part of our community would regard any attempt at unification as a menace to their conscientious beliefs.

For similar reasons, I exclude the vexed question of the schools from consideration.

Let me suggest some branches of the law in which assimilation might be contemplated without attacking deep rooted convictions.

There is perhaps no field in which uniformity is so desirable as that of commercial law. Who could deny the inestimable advantages of a unification of the law relating to commercial sales throughout the Dominion? Our merchants from Halifax to Vancouver would know that their contracts would receive the same construction in all the courts of the land; their vendor's lien would be the same, their warranties identical and their remedies for a breach of the contract would not vary because the performance of the contract was to take place in one or other of the provinces. The differences between us on this subject are not fundamental, certainly not more so than those which existed between the law of England and that of Scotland before the "Sale of Goods Act," which enacted a Code applying to Great Britain and Ireland.

Then take the Succession Duties Acts in our various provinces. By the B. N. A. Act the provincial right of taxation is limited to "direct taxation within the province." One would have thought that this did not contemplate double taxation of the same property, for the same property cannot be at one and the same time within Ontario and within Quebec. But our tax gatherers have been equal to the emergency. If a man dies domiciled in Quebec, having bank deposits in Ontario, the Ontario Government will tax those deposits because they are in the province, and the Quebec Government will also get at them by taxing the devolution of the succession which takes place in Quebec. May I suggest that our respective Attorneys-General might better employ their ingenuity in framing a uniform law which would adopt the same principle of taxation in all the provinces, than in devising schemes for poaching on each others' preserves, and subjecting the estates of decedents to the inequitable burden of a double tax.

Again, what can be more unscientific than the present state of our law on the important subject of insurance? We have insurance companies licensed by the Dominion, and we also have a

system of licensing in each of the nine provinces. And each province has the right of establishing statutory conditions governing policies which differ from those enacted in its sister provinces. To make confusion worse confounded nobody knows how far the Dominion Law of insurance is within the powers of Parliament. The constitutionality of the Act has been referred to the Supreme Court and the case will probably go to the Privy Council.

A similar confusion exists in regard to joint stock companies. The Dominion incorporates some, and each of the provinces exercises the right of incorporating companies "with provincial objects," whatever that restriction may mean. That question is also pending before the Supreme Court upon a reference, and in the meantime no one knows exactly what business can lawfully be done by provincial companies. And yet this is the time when certainty is vital, for we are not merely putting our own capital in corporations, but floating our issues in the markets of the world.

But that is not all. Each province passes laws respecting the rights and liabilities of "Extra-Provincial corporations," which establish different rights and disabilities applicable to foreign and domestic corporations not chartered in that province. When such corporations desire to operate throughout the Dominion they must take into consideration nine different systems of law, and if they also wish to operate in the unorganized territories they must reckon with Dominion enactments as well.

Surely it would be better to put an end to this perplexing diversity by some comprehensive scheme of legislation, than by persevering in litigation which may indeed ultimately tell us what our law is upon the subject, but may leave us dissatisfied as to its condition.

But there is still less excuse for the unnecessary diversity which is deliberately created in new fields of legislation, where no ancient laws or long established usage can be pleaded in extenuation.

Take, for example, the Workmen's Compensation Acts in the different provinces. That is an entirely new subject, and one in which the legislator is quite unfettered by practice or precedents. Our provinces have at great expense appointed separate Commissions to study and recommend a scheme of legislation on the subject, and as a result each province has its own Compensation Act differing in important features from those adopted in the other provinces.

And yet that was pre-eminently a measure requiring uniformity

of treatment throughout the Dominion, in view of the constant interchange of labour from one end of the country to the other. From the employer's point of view it is manifestly desirable that the same law should govern, no matter where the workman resides, where the work is performed or where the accident occurs. But from the workman's standpoint uniformity is of still greater importance. His means are limited, and he should not be unnecessarily exposed to the uncertainty and the conflict of laws. I have in mind two recent cases, one concerning a railway accident, and the other concerning an accident on a Gulf steamer, in which it became necessary to examine a number of legal experts as to the compensation law in a neighboring province, where the casualty had occurred in the course of the man's employment, although he was engaged in each case in Montreal and lived there. And one of these cases was carried to the Supreme Court to settle the vexed question as to whether the law of Quebec or the law of New Brunswick should be applied to the relief of the unfortunate victim.

How much better it would have been to study the subject of Compensation at an inter-provincial conference, and to produce a single act combining all the good features of our different systems and eliminating their very palpable defects.

I might multiply these examples of unnecessary and unprofitable discordance, but I trust I have said enough to convince you that there is a large field for useful and patriotic work in the direction of unity and harmony.

Remember, also, that uncertainty, contrariety and multiplicity of laws in a commercial community means a constant charge on any business for legal advice and litigation and a corresponding diminution of profits. It means endless vistas of test cases and constitutional questions, which, after a checkered career in all our courts, find their way to the Privy Council to the detriment of one, if not of both of the parties.

If I have succeeded in impressing you with the importance and the desirability of such reforms, let us consider what are the means at our disposal for attaining this result.

The first method would be to obtain an amendment to the B. N. A. Act. While technically this remedy is within the jurisdiction of the Imperial Parliament, for all practical purposes it is within our reach, for just as that parliament would not force upon us any change that we did not desire, it would willingly and promptly respond to our unanimous demands. This remedy

should, of course, be used with due regard to the treaty rights of minorities, and in any case should be sparingly and seldom applied, for fear of arousing the antagonism of those who look with alarm at any attempt to lessen the autonomy of the provinces. Among the subjects which I have mentioned, however, there are some with respect to which an extension of the federal jurisdiction could scarcely justify a passionate revendication of provincial rights. I have yet to hear any sound reason for the existence in this Dominion of ten different systems for incorporating and licensing insurance companies and joint-stock companies (nine provincial and one federal), ten different kinds of insurance law, and ten different kinds of company law. The only objection which I have heard on the part of the provinces is that a concentration of all these powers in the Dominion would deprive them of the revenue which they derive from incorporating, licensing or registering such companies. But assuredly this is a matter of detail which could be adjusted equitably by attributing to the several provinces the fees exigible from such corporations, according to the situation of the head office of each corporation, or in some other appropriate manner. It is unnecessary to dwell on the enormous advantages of such a fusion. Every corporation could exercise its powers throughout the Dominion, and in foreign countries as far as the comity of nations permits, without fear of exceeding its own charter powers. A fire insurance company in Ontario would no longer be perplexed as to whether it can insure property in Quebec or in the State of Maine and a commercial corporation in Montreal would not be in doubt as to how far it can operate in British Columbia or in California. The system of incorporating local companies "with provincial objects" was devised before the existence of our great transcontinental railways, and before the enormous expansion of corporate undertakings. It serves no useful purpose to restrict commercial corporations by geographical bounds.

In the second place, the uniformity of our legal systems might be to some extent promoted by further legislation of the Dominion Parliament on subjects which are within its jurisdiction. The federal legislation in regard to banking, railways, interest, inland navigation, bills of exchange and promissory notes, patents, trade-marks and copyrights, has already made notable inroads on civil rights in the provinces. It is possible that still further modifications might be made along these lines, and if our highest appellate courts imitated the Supreme Court of the United States,

the domain of the central legislative power might be further expanded by a liberal construction of the constitution.

But here again there is the danger of exciting the opposition of the champions of provincial rights. Instead of promoting harmony we run the risk of fomenting discord. Any attempt on the part of the Dominion Parliament to legislate on the doubtful confines of central and local jurisdiction provokes resistance, and any judicial decisions which seem to expand the sphere of Dominion influence are closely watched and strenuously combated by the provinces. The law reports are full of these constitutional battles which have been fought with varying fortunes from the time of confederation down to the present day. And the greatest trouble is that there is no absolute certainty about constitutional doctrine as laid down by judicial decisions. What was supposed to be a settled point a few years ago is called in question again, and the holdings of our highest courts cannot always be reconciled with one another.

There is a third and last method of attaining such uniformity as may seem desirable, which appears to me to be entirely free from the objections above outlined. Instead of straining the constitution to the breaking point or seeking any fundamental modifications of that instrument, why should we not proceed by the voluntary and concerted action of the provinces themselves? While we may bitterly resent any attempt from without to legislate us into uniformity, what possible objection can there be to our meeting together, examining our points of difference, ascertaining which of these might be advantageously removed, and passing concurrent and identical legislation on any given subject in our respective legislatures? The experiment has been successfully tried in the United States by the appointment of State boards for promoting uniformity of legislation.

In every state of the Union (48), in every territory and possession, including the District of Columbia, Alaska, Hawaii, Philippine Islands and Porto Rico, there are Commissioners appointed by the Governors for that purpose, and the movement, which was started in the State of New York in 1890, has accomplished notable results. From the report of the twenty-second annual conference held in 1912, it appears that the Negotiable Instruments Act adopted by the Conference of 1896 is now the law in forty states, including the district of Columbia, Hawaii and the Philippine Islands; the uniform Warehouse Receipts Bill is in force in twenty-four states of the Union; the Sales Bill

in nine; the Stock Transfers Bill in five, the Bills of Lading Act in nine, the Divorce Act in three, the Act Relating to Wills executed without the State, in seven and the Act Relating to Family Desertion in four. The first draft of the Uniform Incorporation Law is under consideration, and reports have been presented on the Unification of Commercial Law, on the law of Wills, Descent and Distribution, on Conveyances, on a Uniform Child Labour Law, on a Uniform Workmen's Compensation Act, on Uniform Tax Situs Provisions, and on various other important subjects. The report of last year's Conference (1911) concludes by pointing out the growing and widespread interest taken by the various commercial and industrial business interest in the advocacy of uniform legislation, evidenced by the formation of associations for promoting and supporting the movement, and adds the following weighty observations:

> "It is by and through the work of these Commissioners for upwards of twenty years that a healthy public sentiment has been created that desires, and seeks to obtain statutory unity, rather than diversity, in matters of common interest to all. In order that the voice of law may produce harmony, it should sound one mandate, alike applicable to the peoples of all the states, with one flag and one destiny. Personal desires, local, sectional or state jealousies or pride should give way before the furtherance of the general welfare."

When we consider the progress of this great and patriotic campaign in the United States, we may well ask ourselves why no such organization has ever been started in Canada.

We have indeed, had a number of interprovincial conferences at which matters of common concern have been usefully and harmoniously discussed, but we have never yet had any permanent organization for studying and proposing measures which would diminish and remove the unnecessary and undesirable differences between our systems of law.

Let me again refer to two or three of the instances to which drew your attention.

Even if we cannot make up our minds to have all insurance companies and commercial corporations chartered by the Dominion (which, in my humble opinion would be the best way of solving doubts as to the extent of their powers), what is to prevent us from having identical legislation in all the provinces on insurance law and on company law? Again, why not agree upon a code which would govern all commercial sales and commercial

contracts generally? And why should it be difficult to devise a Statute which would in each province regulate on the same principle the taxes on successions?

One great advantage resulting from this mode of preparing laws is that they are drafted by experts, from whom clearer and more consistent legislation may be expected than from the isolated and often unscientific attempts of local legislators. Year by year we fill our statute books with crude and careless legislation.

But above and beyond the material advantages which would surely result from the careful and dispassionate study of our respective systems, consider also the great benefits of a higher order which must flow from regular and periodic conferences of this kind.

Deliberate and systematic isolation means lack of comprehension, suspicion and distrust. It means that we renounce our opportunities for disseminating the good that is in us, and that we are likely to intensify and perpetuate our peculiar defects.

On the other hand a habit of meeting together and comparing our respective systems could not fail to contribute to a better understanding. While it would probably reveal that there is an irreducible minimum on which, for the present at least, we had better agree to disagree, it would disclose vast fields in which our divergences are merely superficial and not irreconcilable. Because there is a marriage question which at present divides us, because there is a School question, and because there will in future be other burning questions which must be settled by wise and tolerant statesmanship—are these reasons why we should refrain from discarding our imperfections and imitating the good points of our neighbours in matters which are not controversial?

Shall we not rather multiply the points of contact in the hope that the more we find we have in common, the more considerate shall we become in discussing those subjects on which we must be content to differ.